

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GARY ALLEN and ALLEN TEEPE Petitioners, v. STATE OF IOWA, DEPT. OF PERSONNEL, PERSONNEL COMM'N, DEPT. OF AGRICULTURE, IOWA PUBLIC EMPLOYMENT RELATIONS BOARD Respondents.	CASE NO. AA 1982 & 2134 OPINION FILED POLK COUNTY IOWA DEC - 1 AM 9 53 JERRY L. WEISS CLERK DISTRICT COURT
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This matter came on before the Court for hearing on October 5, 1993. The petitioners were represented by Larry Walshire, and the State was represented by Theresa O'Connell Weeg, Assistant Attorney General. The Public Employment Relations Board was represented by Jan Berry. After reviewing the evidence, reading the briefs and being fully advised in the premises, the Court now enters the following ruling.

STATEMENT OF THE FACTS

The petitioners are State employees in the position classification of Livestock Compliance Investigator. They sought to have their positions reclassified as Compliance Officers. The Iowa Department of Personnel ("IDOP") denied this request for reclassification, and that decision was then appealed to a classification appeal committee ("committee"). The committee held a hearing on this matter on August 6, 1991. In its decision

filed September 3, 1991, the committee concluded the matter should be remanded to IDOP for further review because the duties and responsibilities of the Appellants had not been finalized at the time of the hearing.

Following remand, a new reclassification hearing was held. A decision was issued on October 11, 1991, by Connie Hellman, a personnel officer with the IDOP, which denied the request for reclassification. Petitioners filed their second appeal with the committee which held a hearing on February 13, 1992. The decision denying petitioners' request for reclassification was issued on February 24, 1992.

Petitioners then requested that the Personnel Commission review the committee's decision. The Commission voted on March 26, 1992, to deny Petitioners' request for review. Petitioners filed for judicial review on April 27, 1992.

Petitioners also filed a separate action on April 2, 1992 with the Public Employment Relations Board ("PERB") causing parallel actions to be reviewed in two separate forums: the Personnel Commission and the Public Employment Relations Board. PERB on September 14, 1992 dismissed the action for lack of jurisdiction. That dismissal was appealed and later upheld by PERB on January 20, 1993. The Court on July 20, 1993 consolidated both AA 2134 and AA 1982 for judicial review.

CONCLUSIONS OF LAW

The framework of this legal analysis must be in two parts.

First, the Court must choose which agency has jurisdiction over this case. Second, the Court must then review that agencies decision with regard to the standards established by Iowa Code § 17A.19 (1993).

I. Jurisdiction:

Iowa Code § 19A.9(1) (1993) directs the Director of the IDOP and the Personnel Commission to adopt rules for the administration and implementation of a classification plan, including a system of review for particular classifications. In order to carry out the legislative directive of § 19A.9(1) the Personnel Commission adopted 581 Iowa Administrative Code Ch.3 (1993). It is clearly established in 581 Iowa Administrative Code §§ 3.4 and 3.5 that the Director of the IDOP and the Personnel Commission hold jurisdiction over the classification of all executive branch job positions, unless otherwise specifically provided for by law. The administrative code states, inter alia, that:

The director [of the IDOP] shall decide the job classification of all positions in the executive branch of state government except those specifically provided for by law.

581 I.Admin.C. 3.4(1) (1993). Sections 3.4 and 3.5 also specifically provides for an administrative review of contested classifications by the Director, followed by the Classification Appeal Committee, and the Personnel Commission. If the final agency decision is unacceptable to the petitioner, it can then be

brought for judicial review. 581 I.Admin.C. 3.5(6) (1993).

The general rule of statutory construction to be applied is that when a statute contains both a general and specific provision, the specific provision controls over the general. Ritter v. Dagel, 156 N.W.2d 318, 324 (1968) and State v. Broten, 295 N.W.2d 453, 455 (1980). In this case the specific provisions provide a particular process for review of job classifications that leads through the agency from the Director of the IDOP, to the Classification Appeal Committee, and on through the Personnel Commission. From the Personnel Commission's decision an appeal can be made to the court system.

No specific provision establishes jurisdiction of classification reviews with the Public Employment Relations Board. In fact, § 19A.14(1), which is relied on by the petitioners, is a general statute that does not directly address the review of classification systems. Therefore, this Court is under an obligation to follow the general rules of statutory construction and hold that jurisdiction does not rest with the Public Employment Relations Board. This Court affirms the agency below and holds that the Personnel Commission, and not the Public Employee Relations Board, has jurisdiction over a classification dispute.

II. Review of the Personnel Commission's Decision:

Judicial review of agency action is authorized under Iowa Code § 17A.19. Petitioners in their petition for judicial review

have alleged that a number of errors are present in the agency's review of this case. They shall be addressed in the order that they were made in the petition:

a. Petitioners' argue that the Personnel Commission violated Iowa Code § 17A.16 (1993) by failing to make a separate findings of fact and conclusions of law. Section 17A.16 (1993) requires a finding of fact and conclusion of law be made in a contested case. This requirement has been satisfied by the decision of the Classification Appeal Committee. The Personnel Commission's role is to review the Classification Appeal Committee's factual and legal determination, not to make a separate finding of facts. The Commission's review is solely on the Committee's hearing record. 581 I.Admin.C. 3.5(5) (1993). The Commission's one-page decision not to hear the review did not violate § 17A.16.

b. Petitioners' argue that the Classification Appeals Committee was improperly chosen by the Director of the Iowa Department of Personnel pursuant to 581 I.Admin.C. 3.5(2) when, in fact, it is the commission itself that is statutorily directed to appoint the committee pursuant to Iowa Code § 19A.9(1) (1993). The Court has reviewed the arguments of counsel and finds that the petitioners' failed to show that the delegation of appointment powers to the Director in 581 I.Admin.C. 3.5(2) was beyond the scope of the agencies rule making authority. A rule is within an agency's authority if a rational agency could

conclude that the rule is within its statutory mandate. Dunlap Care Center v. Iowa Dept. of Social Services, 353 N.W.2d 389, 397 (Iowa 1984). The Court finds that this delegation falls within the rationale agency test.

c. The petitioners' argue that allowing the director to appoint the Classification Appeal Committee is a violation of Iowa Code § 17A.17(3) because members of the committee, charged with reviewing the classification decisions of the director of personnel, are subordinate to and under the direct supervision of the very same director. The relevant portion of the statute relied upon by the petitioners states, inter alia:

Nor shall any such individual be subject to the authority, direction or discretion of any person who has prosecuted or advocated in connection with that contested case. . . .

IOWA CODE § 17A.17(3) (1993). To be a violation of this provision it is necessary that the individual acting as the decision maker be under the control of a person that has prosecuted or advocated in this matter. The advocating in this case was carried out by staff members of the Iowa Department of Personnel, not personally by the director. The Courts finds that no violation of § 17A.17(3) (1993) exists.

d. Petitioners' argue that the findings of fact by the Classification Appeals Committee and the Personnel Commission are insufficient and unsupported by substantial evidence. Section 17A.16 requires that a "concise and explicit statement of

underlying facts" be made a part of the decision. IOWA CODE § 17A.16 (1993). The Court finds that while the finding of fact by the Classification Appeal Committee could be more thorough, it is, nevertheless, sufficiently concise and explicit to satisfy the statutory requirements.

e. Petitioners' argues that the decision to deny reclassification of the position of Livestock Compliance Investigator into Compliance Officer II is:

1. contrary to 581 I.Admin.C. 3.1(1) and Iowa Code § 19A.9(1);
2. a violation of the policy of comparable worth pursuant to Iowa Code 79.18;
3. a denial of state and federal constitutional rights to due process and equal protection; and
4. unreasonable, arbitrary, and capricious.

First, the Court finds that the Agency below did not violate 581 I.Admin.C. 3.1(1) or Iowa Code § 19A.9(1) by failing to reclassify the job position of the petitioners. The IDOP classified the positions appropriately with respect to the skills and responsibilities needed, and followed the appropriate review procedure.

Second, the Court finds that petitioners' reliance on Iowa Code § 79.18 and the policy of comparable worth is misplaced. Comparable worth under § 79.18 is to protect women from being paid less for jobs of comparable worth to those performed by men.

The disparity in pay because of gender is not at issue in this case.

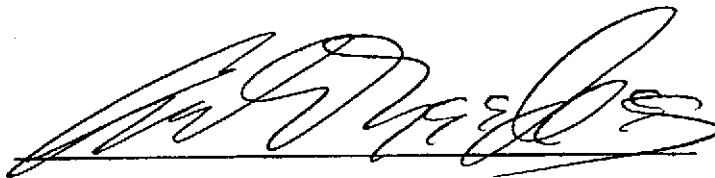
Third, the Court finds that there is no violation of the petitioners' due process or equal protection rights. Petitioners' argument is that denying jurisdiction to the Public Employment Relations Board in effect denies them a suitable remedy and that denying them a suitable remedy is a violation of their constitutional rights. This reasoning is faulty because the petitioners' due process and equal protection rights are still enforceable through judicial review of the agency's actions. Petitioners' do not have the right to select the agency review system of their choice and a failure to gain access to a particular system does not constitute a denial of constitutional rights.

In conclusion, the multitude of arguments made by the petitioners' have been examined and found to be inappropriate or without merit. Further, the agency's decision not to reclassify the Livestock Compliance Investigator position was supported by substantial evidence.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
agency action is AFFIRMED.

Dated 30 Nov, 1993.



The Honorable Gene L. Needles
Judge - Fifth Judicial District of
Iowa

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